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C O N F I D E N T I A L HARARE 000927

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR JENDAYI FRAZER
LONDON FOR CHARLES GURNEY
PARIS FOR CHARLES NEARY
NAIROBI FOR TERRY PFLAUMER

E.O. 12958: DECL: 04/16/12

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SUBJECT: ZIMBABWE OPPOSITION FILES LEGAL CHALLENGE TO
PRESIDENTIAL ELECTION

REF: HARARE 913

Classified by Political Officer Todd Faulk for reasons:
1.5 (b) and (d).

1. (U) On April 12, the opposition Movement for Democratic Change (MDC) filed with the High Court a 135-page legal challenge to President Mugabe's declared victory in the March presidential poll. The filing was made just before the 30-day deadline to submit electoral challenges elapsed. The lawsuit calls for an annulment of the election result and a new election under international supervision. In an April 11 press statement, MDC President Morgan Tsvangirai stated that the election "was stolen from the people of Zimbabwe," and that the MDC sees "the legal process as complementing the political process." "Our lawyers have uncovered mountains of hardcore and powerful evidence of electoral fraud," Tsvangirai claimed, but he clearly acknowledged that the legal case's biggest hurdle is overcoming the judicial system subverted by the ruling party.

2. (C) On April 15, poloff spoke to Topper Whitehead, who gathered most of the information presented in the legal challenge. He is an MDC supporter, but holds no official position in the party. Whitehead stated that President Mugabe, along with Registrar-General Tobaiwa Mudede, Minister of Justice Patrick Chinamasa, and Electoral Supervisory Chairman Sobusa Gula-Ndebele, are respondents in the case. All have been served with papers to appear in court, except Mugabe, whose office refuses to accept them; there are ways around this, Whitehead said, but it would lead to delays in the court hearing the case. Whitehead conveyed that the MDC is gathering affidavits from polling agents, presiding officers and voters who can attest to instances of electoral fraud. Thousands of pages of documentation and videotape from hundreds of eyewitnesses have already been gathered. One of the reasons the MDC is going to court over the election, Whitehead opined, is to provide leverage in the talks with ZANU-PF due to reconvene on May 13 (REFTEL). The MDC would like to have the option of dropping the case if the talks lead to some sort of resolution.

3. (C) In a related development, Whitehead informed poloff that last week the Supreme Court ruled against an earlier MDC legal measure challenging the validity of Section 158 of the Electoral Act, which gives Mugabe the power to issue decrees regarding the conduct of elections. It was a 4-to-1 decision in which Wilson Sandura was the only dissenter. A copy of the decision has not been made available to the MDC yet, Whitehead added, but the Court basically ruled that the issue was not a constitutional one and should be heard in the High Court first. As a result, the Section 158 challenge has now been incorporated into the MDC's latest lawsuit.

4. (C) Comment: We have been told by several MDC officials that the MDC has no hope of success in its legal challenge of the election but that it wants to pursue all possible avenues and be seen as taking some kind of action. It is also a useful bargaining chip in the inter-party talks -- one of the few the opposition has left. It is too early to tell how the case will proceed in the courts, but experience suggests ZANU-PF will use its influence to ensure the courts drag out the proceedings -- and consume the MDC's resources -- before ultimately throwing the case out. End comment.

Whitehead